

September 30, 1996

OPINION NO. 96-049

The Honorable Richard L. Ross
Morgan County Prosecuting Attorney
109 East Main Street
McConnelsville, Ohio 43756-1125

Dear Prosecutor Ross:

I am in receipt of your letter requesting an opinion on the question whether an attorney employed by a county humane society pursuant to R.C. 2931.18 to prosecute criminal violations of R.C. Title 9 is permitted to receive career criminal history checks from the law enforcement automated data system (LEADS) and provide those checks to defendants pursuant to Ohio Criminal Rule 16. Your question involves a situation in which an attorney for a county humane society has filed a criminal action under R.C. Title 9. The defendant has submitted a discovery request for a copy of his prior criminal record. The attorney has requested that the county prosecuting attorney or sheriff obtain a career criminal history check through LEADS and provide it to the attorney so that the attorney can respond to the discovery request. Your question is whether "the attorney for the Humane Society [is] part of law enforcement so that career criminal history checks from LEADS may be given to him when he is prosecuting violations of Title 9."

In order to answer your question, it is helpful to understand LEADS and the type of information at issue in your request. The law enforcement automated data system, known as LEADS, is a program for providing computerized data and communications to the various criminal justice agencies of Ohio. R.C. 5503.10. It is administered by the Superintendent of the State Highway Patrol, who has adopted rules governing the operation of the program and participation in the program. *Id.*; see 10 Ohio Admin. Code 4501:2-10-12; [1995-1996 Monthly Record, vol. 1] Ohio Admin. Code 4501:2-10-04, -05, -07, -09, -11, at 731-37; [1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-01, -02, -03, -06, -08, -10, -13, at 2550-56; 1994 Op. Att'y Gen. No. 94-046; 1993 Op. Att'y Gen. No. 93-032. The rules permit participation in LEADS by designated types of agencies, in some cases restricting the types of information that they may obtain. [1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-03, at 2551-52.

LEADS provides access to various kinds of information, including computerized criminal history files. See [1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-01(G), at 2550; 1994 Op. Att'y Gen. No. 94-046; 1993 Op. Att'y Gen. No. 93-032. LEADS is connected with

the National Crime Information Center (NCIC), which is a nationwide computerized filing system managed by the FBI, and also with the National Law Enforcement Telecommunications System (NLETS), which permits inquiries to other state systems. *See* [1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-01(B), (C), at 2550; 28 C.F.R. § 20.31 (1995); 1994 Op. Att'y Gen. No. 94-046; 1993 Op. Att'y Gen. No. 93-032. Thus, LEADS is a source of information that permits an authorized participant to obtain a career criminal history check. *See* [1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-03, at 2551-52; 1993 Op. Att'y Gen. No. 93-032. It is this type of information that is the subject of your question.

Rule 16(B)(1)(b) of the Ohio Rules of Criminal Procedure states:

Defendant's prior record. Upon motion of the defendant the court shall order the prosecuting attorney to furnish defendant a copy of defendant's prior criminal record, which is available to or within the possession, custody or control of the state.

Thus, in a criminal proceeding in an Ohio court, *see* R. Crim. Proc. 1, the defendant is entitled, upon proper motion, to obtain a copy of his or her prior criminal record, which is available to or within the possession, custody or control of the state. Since LEADS is a state-administered program for providing computerized data and communications to criminal justice agencies of Ohio, a criminal record that can be obtained from LEADS is available to the state. *See* R.C. 5503.10; [1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-01(G), (L), at 2550-51; 1993 Op. Att'y Gen. No. 93-032. *See generally State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 435, 639 N.E.2d 83, 94-95 (1994) (records held by police officials are available to the state for purposes of discovery); *State v. Kinney*, 44 Ohio Misc. 69, 337 N.E.2d 668 (C.P. Cuyahoga County 1974) (criminal record includes information available from state and federal sources). Accordingly, in any action that is subject to Criminal Rule 16, a defendant is entitled to obtain a copy of his criminal record as available from LEADS.

When a county humane society employs an attorney pursuant to R.C. 2931.18, the attorney is paid out of the county treasury "to prosecute violations of law" relating to cruelty to animals or children. R.C. 2931.18; *see also* R.C. 1717.02 (the objects of a humane society are "the inculcation of humane principles and the enforcement of laws for the prevention of cruelty, especially to children and animals"); 1955 Op. Att'y Gen. No. 5668, p. 376. Actions brought by such an attorney are criminal prosecutions "carried on in the name of the state of Ohio, and by the authority of the state." *State v. Hafle*, 52 Ohio App. 2d 9, 15, 367 N.E.2d 1226, 1231 (Clinton County 1977); *see* Ohio Const. art. IV, § 20.

The duties and authority of an attorney employed by a county humane society were described by a prior Attorney General as follows:

As to the attorney [employed by a county humane society], let it be observed that his *duties* are confined to *prosecution of offenses against the criminal law*. "*Prosecution*" in its ordinary and well understood meaning certainly *comprehends every step necessary to bring a violator of a criminal law to justice*. It is well

defined by the Supreme Court of California in *Wong v. Anthony*, 199 Cal., 15: "Prosecution includes every step in action from its commencement to its final determination." Accordingly, I have no hesitancy in holding that it is the duty of an attorney employed by a humane society to file all criminal affidavits required in the prosecutions begun by him pursuant to these sections referred to, and to do so as a part of the duty for which he is paid a salary....

1955 Op. Att'y Gen. No. 5668, p. 376 at 380 (emphasis added.) The attorney's duty to prosecute thus comprehends all steps required to bring a violator of a criminal law to justice, including providing whatever discovery is called for in the case. The attorney employed by the humane society, therefore, as the prosecuting attorney in a criminal case, is required by Criminal Rule 16(B)(1)(b) to furnish the defendant with a copy of the defendant's prior criminal record. *See generally State v. Durch*, 17 Ohio App. 3d 262, 479 N.E.2d 892 (Trumbull County 1984) (acts by officers of county humane society are subject to provisions of the fourth amendment of the United States Constitution regarding search and seizure); *Hartzler v. Licking County Humane Soc'y*, 740 F. Supp. 470 (S.D. Ohio 1990) (action against county humane society and its agent for damages under 42 U.S.C. § 1983, alleging violations of the fourth and fourteenth amendments to the United States Constitution); 1986 Op. Att'y Gen. No. 86-055.

Your question arises from the fact that, in the instant case, neither the county humane society nor its attorney has been approved to participate in LEADS. *See* [1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-03, at 2551-52; 1994 Op. Att'y Gen. No. 94-046; 1993 Op. Att'y Gen. No. 93-032. In addition, rules governing LEADS restrict the dissemination of information accessed through LEADS "to the use of duly authorized law enforcement and/or criminal justice agencies for the administration of criminal justice" and state specifically: "The data shall not be sold, transmitted, or disseminated to any non-law enforcement agency, non-criminal justice agency or unauthorized person." [1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-06(B), at 2553; *see also* 1994 Op. Att'y Gen. No. 94-046. The dissemination of criminal history record information is further restricted pursuant to state and federal law. *See* 28 C.F.R. §§ 20.1, .20-.21, .30-.34; R.C. 5503.10; [1995-1996 Monthly Record, vol. 1] Ohio Admin. Code 4501:2-10-09(E), at 733; *see also* 1993 Op. Att'y Gen. No. 93-032.

Rule 4501:2-10-03 provides for participation in LEADS and the assignment of an originating agency identifier upon application and documentation that the requester is one of the specified entities, which include a criminal justice agency,¹ an agency under the management control

¹ "Criminal justice agency" is defined to mean:

- (1) Courts; and
- (2) A governmental or non-governmental law enforcement agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part (fifty per cent or more) of its annual budget to the administration of criminal justice.

of a criminal justice agency, certain nongovernmental railroad or private campus police departments, certain nongovernmental agencies or subunits that allocate fifty percent or more of their budgets to the administration of criminal justice (excluded from access to criminal history record information), a governmental regional dispatch center (excluded from access to criminal history files), the National Insurance Crime Bureau (granted limited access to vehicle, license plate, and boat information), certain governmental bureaus of motor vehicles or drivers license registries (excluded from access to criminal history record information), intra-state regional systems, and governmental, non-criminal justice agencies that enforce or assist in enforcing laws (granted access to Ohio and other state bureau of motor vehicle data). [1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-03(A), at 2551-52. The facts before us do not demonstrate that the humane society or its attorney can establish a right to participate in LEADS pursuant to this rule.

Even without establishing a right to participate in LEADS as one of the entities listed in rule 4501:2-10-03, however, an attorney employed by a county humane society is statutorily capable pursuant to R.C. 2931.18 of having access to criminal history record information that is available through LEADS in the situation you have described. In bringing a criminal prosecution pursuant to R.C. 2931.18, the attorney for the humane society is serving as part of law enforcement and is administering criminal justice. *See* [1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-01(D), at 2550 (defining the "[a]dministration of criminal justice" to include the performance of "prosecution"). The attorney is prosecuting a criminal action in the name of the state, performing a function that could be undertaken by the county prosecuting attorney. Further, Criminal Rule 16(B)(1)(b) requires that the attorney obtain the requested criminal history and provide it to the defendant. It must be concluded that the attorney for the humane society is qualified to receive LEADS criminal history record information in such circumstances.

[1995-1996 Monthly Record, vol. 2] Ohio Admin. Code 4501:2-10-01(J), at 2550.

For the reasons discussed above, it is my opinion, and you are advised, that an attorney who is employed by a county humane society pursuant to R.C. 2931.18 to prosecute criminal violations of R.C. Title 9 is permitted to receive criminal history record information from the law enforcement automated data system (LEADS) in order to provide that information to a defendant pursuant to Ohio Criminal Rule 16(B)(1)(b).

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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Morgan County Prosecuting Attorney
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SYLLABUS:

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